



OFFICE OF THE VICE PRESIDENT AND GENERAL COUNSEL

## FAX TRANSMITTAL COVER SHEET

TO: COMMISSIONER OF PATENTS

FAX: 703-872-9314

DATE: 6/2/03

RE: PETITION TO RESET A PERIOD FOR REPLY UNDER MPEP §710.06  
APPLICATION SERIAL No. 09/871,016

FROM: Turan P. Odabasi  
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Number of Pages Including Cover Sheet: 12



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#1  
PATENT  
7-17-03

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Jan Frohman, et. al. )  
Serial No. 09/871,016 )  
Filed: 05/31/2001 )  
For: SOUND GENERATING )  
APPARATUS FOR USE WITH GLOVES )  
AND SIMILAR ARTICLES )

**PETITION TO RESET A PERIOD FOR REPLY DUE TO LATE RECEIPT OF AN  
OFFICE ACTION PURSUANT TO MPEP § 710.06**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Dear Sir:

Applicant respectfully requests that the statutory response period of six months be restarted in the above-identified matter.

On May 20, 2003, I called Art Unit 2600 to inquire about an unanswered status inquiry regarding the above-identified application. I was informed that an Office action had been mailed to me on December 19, 2002. To date I have not received this original mailing of the Office action and I can only assume that this copy was lost in the mail and will not be delivered to me at any time in the near future, if ever. I was instructed to submit a written request to receive a copy of the Office action and to reinstate the six-month response period thereon. On May 30, 2003, I received a facsimile copy of the office action from the examiner, Tom Mullen, who states in the cover memo attached thereto "It is noted that applicant apparently received the "Notice to File Missing Parts" mailed from the PTO on 8/6/01, since applicant did respond thereto. Thus, there is no basis in MPEP 710.06 for restarting the shortened statutory period (SSP) of 3 months, which started 12/19/02. (Six-month period ends 6/19/03.)" Applicant respectfully requests reconsideration of this decision.

MPEP § 710.06 sets forth the criteria under which the Office will grant a petition to restart the previously set period for reply to an Office action. These criteria are:

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(A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;

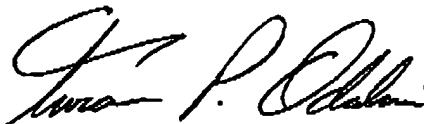
(B) a substantial portion of the set reply period has elapsed on the date of the receipt (e.g., at least 1 month of a 2- or 3- month reply period had elapsed); and

(C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g. a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon ...), and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address.

Pursuant to MPEP § 710.06, applicant is including with this petition a copy of the faxed Office action, showing the date of its receipt at the correspondence address of applicant's attorney, Turan P. Odabasi, as 5/30/03, and bearing a date stamp indicating the same. This petition has been filed less than 2 weeks from 5/30/03. As of 5/30/03, over five months have passed from the mailing date of the original Office action and the date of receipt of the fax copy from the examiner at the office of applicant's attorney. Therefore, a substantial portion of the set reply period has elapsed as of the date of receipt. In fact, the entire 3-month shortened statutory reply period set forth in the Office action has passed, and less than three weeks remain before the six month period ends. Also included herewith is a copy of an affidavit signed by Lisa K. Komenda, Paralegal at the Office of the Vice President and General Counsel at the University of Nebraska, which states that the only record of having received a copy of the Office action at the office of applicant's attorney is the facsimile copy received from Examiner Mullen on 5/30/03.

Whereas applicant's petition meets the requirements set forth in MPEP § 710.06, applicant respectfully requests that the statutory response period of six months be restarted in the above-identified matter.

Respectfully submitted,

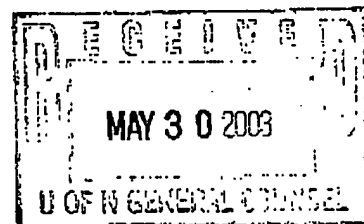


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## FAX COVER SHEET



TO: Turan Odabasi

FAX NUMBER: 402 472 2038

NUMBER OF PAGES 8 (plus this page)

FROM: Tom Mullen (Exr.) / Copy of

RE: 09/871 D16 (Office Action mailed 12/19/02)

DATE: 5/30/03

Only received six  
of eight pages. Left  
message on his voice  
mail to re-fax. ee

5-30-03

COMMENTS: Office Action was properly mailed to the correspondence address of record (as set forth in the transmittal letter filed with the application, 5/31/01). It is noted that applicant apparently received the "Notice to File Missing Parts", mailed from PTO on 8/6/01, since applicant did respond thereto. Thus, there is no basis in MPEP 710.06 for restarting the shortened statutory period (SSP) of 3 months, which started 12/19/02. (Six-month period ends 6/19/03.)

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4, 7, 10, 13, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Crow.

Crow discloses a "cheer simulator" adapted to be worn on a user's hand (note the "pistol grip" configuration of Figs. 1-2, which is "worn" in the sense that at least part of the hand is inserted into at least part of the housing, i.e. the finger inserted into the trigger opening), for the purpose of "express(ing) identifiable outcry and clamorous support for (a) team" (Abstract), comprising housing/article 10; electronic assembly (Fig. 4 or Fig. 5) which is "attached to" and/or "contained within" the article; sound generating means 28, i.e. for generating "humanly recognizable, audible mascot sounds" (col. 3, lines 58-59); and actuating means 14. It is inherent that the apparatus also "allow(s) the user to...de-actuate" the generating means 28, i.e. the user can "allow" the generating means to de-actuate after one cycle of operation (e.g. "the growl of a bear"--col. 4, line 6) unless the user retriggers the actuating means 14; alternately, of course, the user can "de-actuate" the sound generator by removing battery 12. It is further inherent that the generated sound--in the context of supporting a team at a sporting event--may be considered to be "associated with showing approval or disapproval of an event".

Regarding claims 4 and 10, note in Fig. 4 or Fig. 5 power source 12; electronic circuit 16 (i.e. a ROM circuit having digital memory 18) for storing a prerecorded sound (col. 3, lines 37-39 and 61-64); and audio speaker 28.

Regarding claim 17, the sounds emitted by speaker 28 are clearly "associated with an athletic event". Regarding claim 18, Crow further teaches a "selection structure" (toggle switch 15, see Fig. 4 and col. 4, lines 15-20) for selecting from a variety of sounds.

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7. Claims 1-2, 7-8, 13, 16 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Chung-Piao.

Note in Chung-Piao, article 1 which is a "glove body"; electronic assembly 4 which is "attached to" and/or "contained within" the article (note substrate sheet 11); sound generator 3; and actuator/de-actuator means 6 (note col. 2, lines 58-62). The alarm sound generated by sound generator 3 in Chung-Piao inherently shows "disapproval" of an event (e.g. the threatening approach of an assailant).

Regarding claim 16, the actuator means 6 can be a type of "on/off switch" as discussed at col. 2, lines 58-62 (referred to above).

Regarding claim 18, Chung-Piao discusses at col. 3, lines 29-35 a "selection structure" (two switches, both designated 6 in Fig. 4) for selecting from a variety of sounds.

8. Claims 1, 5, 7, 11, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Cranford et al.

Cranford et al discloses a sound generating apparatus 10, comprising an article 11 adapted to be worn on a user's hand (note the "pistol grip" configuration of Figs. 1-4, which is "worn" in the sense that at least part of the hand is inserted into at least part of the housing, i.e. the fingers inserted into the openings 15-17); electronic assembly (Fig. 10 or Fig. 11) which is "attached to" and/or "contained within" the article; sound generating means 21,22; and actuating means 20. It is inherent that the apparatus also "allow(s) the user to...de-actuate" the generating means 21,22, i.e. the user can "allow" the generating means to de-actuate after one cycle of operation (a predetermined time interval—col. 4, lines 60-62) unless the user retriggers the actuating means 20; alternately, of course, the user can "de-actuate" the sound generator by removing battery 30. It is further inherent that the generated sound—in the context of "discourag(ing) an attacker" (Abstract)—may be considered to be "associated with showing... disapproval of an event".

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Regarding claims 5, 11 and 14, the actuating means may further include a "shock sensor" (col. 5, lines 1-8).

9. Claims 1, 3, 7, 9, 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Halperin.

Note in Halperin, article 20 which is an "elongated strap"; electronic assembly (Fig. 3) which is "attached to" and/or "contained within" the article (note housing 12); sound generator 34; and actuator/de-actuator means 14,16 (note col. 2, lines 4-24). The alarm sound generated by sound generator 34 in Halperin inherently shows "disapproval" of an event (e.g. the threatening approach of an assailant).

Regarding claim 16, the actuator means 16 is essentially an "on/off switch".

10. Claims 13 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hiraki.

Note in Hiraki, article 12 which is worn on a user's hand; electronic assembly (Fig. 6, particularly alarm circuit 60 and annunciator 62) which is capable of emitting sounds (at 26, Fig. 3) inherently showing "disapproval" of an event (e.g. the threatening approach of an assailant); and actuator (56,58 in Fig. 6) connected to the assembly for "energizing" the assembly to result in emitting of sound (see col. 3, lines 31-37).

Regarding claim 16, the actuator further includes an on/off switch 66.

Regarding claim 19, the "actuator" (56,58) receives an initiating signal from an element 44 secured to the article 12, which element is mounted in the palm of the hand and is actuated by depressing an element 20; thus, it is inherent that the actuator (56,58) will "operate in response to the clapping motion of hands", i.e. if the wearer claps his hands the element 20 will be depressed to cause element 44 to send a signal to the "actuator" (56,58), which then energizes the electronic assembly (60,62).



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11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung-Piao.

Note further in Chung-Piao, power source 5 and electronic circuit 4 which stores a prerecorded sound (col. 2, lines 24-29). The sound generator 3 is described as a "buzzer" but Chung-Piao further teaches that "(t)he number, structure, kinds, positioning and shapes of the... buzzers 3...are not limited" to the disclosed type (col. 2, lines 19-21). Thus, a wide variety of sound generator devices, many of which (including those using an "audio speaker") are notoriously old and well known in the art, may be used in the Chung-Piao device. Therefore, it would have been obvious for the sound generator in Chung-Piao to include an "audio speaker".

13. Claims 6, 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cranford et al.

While Cranford et al provides a general teaching of using a "shock sensor" to monitor the situation where "a sharp blow or jolt" is imposed on the device when "an attacker...strike(s) the hand" of the wearer, a variety of sensor types are notoriously well known in the art for monitoring this type of condition, i.e. sensors that can detect sudden "accelerations" or "decelerations" of an alarm device or the body part to which it is attached. Therefore, it would have been obvious to use an "accelerometer" either to serve as the shock sensor itself or in place of the shock sensor, in the device of Cranford et al.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tom Mullen whose telephone number is (703) 305-4382. The examiner can normally be reached on Mon-Thur from 6:30AM to 4:00PM. The examiner can also be reached on alternate Fridays (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Daniel Wu, can be reached on (703) 308-6730.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700.

Any response to this action should be mailed to:


Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to:

(703) 872-9314

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

T. Mullen  
December 17, 2002

  
Thomas J. Mullen, Jr.  
Primary Examiner  
Art Unit 2632

## PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Jan Frohman, et. al. )  
 )  
Serial No. 09/871,016 )  
 )  
Filed: 05/31/2001 )  
 )  
For: SOUND GENERATING )  
APPARATUSFOR USE WITH GLOVES )  
AND SIMILAR ARTICLES )

## AFFIDAVIT OF LISA K. KOMENDA

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

Lisa K. Komenda, being first duly sworn, deposes and states as follows:

1. I am employed as a Paralegal with the Office of the Vice President and General Counsel at the University of Nebraska.
2. On May 30, 2003, our office received a facsimile copy of an Office action from Examiner Tom Mullen of the United States Patent and Trademark Office addressed to Turan Odabasi, attorney of record in the above-identified matter. I stamped the date of receipt in the upper right-hand corner of the cover page of the fax and counted the number of pages received to make sure all the pages of the fax had been received. I noticed that only six (6) pages of the eight (8) pages noted on the fax cover sheet had been received. I then called Examiner Mullen at the number indicated on the fax cover sheet and requested that he resend the fax to Mr. Odabasi. As of the date of this affidavit, a complete copy of this fax has not been received by our office.
3. Our office has no record of having received the original Office action in the above-identified matter at the correspondence address, 228 Varner Hall, University of Nebraska, Lincoln, Nebraska, 68583-0745 prior to the receipt of the facsimile copy from Examiner Mullen on May 30, 2003. Our only record of having received a copy of this Office action is the facsimile copy received from Examiner Mullen on May 30, 2003.

4. I am competent to testify to the foregoing of my own personal knowledge and would so testify in a court of law were I called to do so.

Lisa K. Komenda  
Lisa K. Komenda

State of Nebraska     )  
                                  )ss  
County of Lancaster    )

The foregoing affidavit was acknowledged before me this 2<sup>nd</sup> day of June, 2003 by Lisa K. Komenda, Paralegal in the Office of the Vice President and General Counsel at the University of Nebraska.



Patricia Henry  
Notary Public